

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Docket No. 05-932-A5

In re Application of Anand <i>et al.</i>)	
)	
Application No.: 10/565,657)	Group Art Unit: 1625
)	
Filing Date: October 5, 2006)	Confirmation No.: 6136
)	
Entitled: Anaplastic Lymphoma Kinase)	Examiner: DAVIS, Zinna Northington
Modulators and Methods of Use)	

PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
FILED UNDER 37 C.F.R. § 1.705(b)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests reconsideration of the Office's Patent Term Adjustment (PTA) calculation for U.S. Patent Application Serial No. 10/565,657.

Applicant respectfully submits the Office has miscalculated the delay attributable to Applicants in this case. In the PTA calculation shown on PAIR as of November 19, 2010, a 49-day delay was attributed to Applicants for filing a corrected response to the Office's June 16, 2009, requirement for restriction. Applicant's original response was filed on July 14, 2009, and a corrected response was filed 49 days later, on September 1, 2009. *See* 37 C.F.R. § 1.704(c)(7). However, Applicants note that under 35 U.S.C. § 154(b)(2)(C)(i), PTA is only to be reduced for the "period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution of the application." Further, 35 U.S.C. § 154(b)(2)(C)(ii), notes that (emphasis added) "an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time *in excess of 3 months* that are taken to respond to a notice from the Office making any rejection, objection, argument, or other request, *measuring such 3-month period from the date the notice was given or mailed to the applicant.*"

Under 35 U.S.C. § 154(b)(2)(C)(ii), Applicants could have replied at any time until September 16, 2009, without having been deemed to "have failed to engage in reasonable efforts to conclude processing or examination." Therefore, even though a correction to Applicant's original response was filed on September 1, 2009, it was prior to the September 16, 2009, deadline established by § 154(b)(2)(C)(ii) based on the June 16, 2009, mailing date of the requirement for restriction. Accordingly, Applicants submit that the 49-day delay attributed by the Office is inappropriate as Applicants did not fail to "engage in reasonable efforts to conclude processing or examination."

Using the correct Applicant delay results in a PTA of 467 days rather than the 418 days granted by the Office as follows.

In the present case, the A delay is 559 days for the Office issuing a first communication on June 16, 2009, which was 14 months and 559 days after the application satisfied the requirements of 35 U.S.C § 371(c) (37 C.F.R. § 1.703(a)(1)).

The B delay cannot be calculated until the issue date has been established.

Applicant's delay is 92 days for filing a response on June 15, 2010, which was 3 months and 92 days after the Office's communication of December 15, 2009 (37 C.F.R. § 1.704(b)).

Thus, applicant submits that the proper PTA is: 559 (A delay) - 92 (applicant delay) = 467 days, not 418 days as calculated by the Office.

The '657 application is not subject to a terminal disclaimer.

Conclusion

For all the reasons stated above, the applicant respectfully submits that the proper PTA is 467 days and requests appropriate correction.

Fee Authorization: The Commissioner is authorized to charge the cost of any fees that may be associated with the filing of this Petition to Deposit Account No. 13-2490.

If there are any questions or comments regarding this petition, the Office is encouraged to contact the undersigned in order to expedite prosecution.

Respectfully submitted,

Date: November 24, 2010

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